

Overview of AB 32 and SB 375

AB 32, the California Global Warming Solutions Act, is the first legislation aimed at regulating greenhouse gas (GHG) emissions in the United States. AB 32 sets a mandatory target for the State to reduce its GHG emissions. Specifically, it calls for a reduction to 1990 levels by 2020. While other States, and groups of States, have created legislative policy around global warming, AB 32 is the first State law calling for specific and mandatory emissions reductions. Its numerical targets were set up to follow the international Kyoto protocol from which the United States withdrew in 2001.

AB 32 calls for the State to reduce its emissions, and authorizes a handful of State agencies, notably the Air Resources Board (ARB) to develop and implement measures to achieve the State's target. The law describes a series of steps that the ARB and others must take, and leaves most of the details to be worked out through these future processes.

The most important early step is the creation of a "Scoping Plan" which was adopted by ARB on December 11, 2008. The AB 32 Scoping Plan identifies and describes the specific measures by which the State will achieve the reductions. The Scoping Plan is laid out by sector, and describes regulatory, market, and incentive-based measures within each sector, and ascribes to each an anticipated level of emission reduction.

The largest reductions are attributed to three key areas: new vehicle and fuel standards, energy efficiency efforts including green buildings, and the energy generation sector. In brief, the State anticipates reducing nearly half of the necessary 174 million metric tons of CO₂ equivalent in these three areas. Fuels, engines, and utilities have been regulated historically by ARB, and can be addressed through relatively straightforward mechanisms. To a large degree, the amount of CO₂ emitted into the atmosphere depends on

the millions of discreet choices made by government entities, businesses and individuals. Recognizing the inherent difficulty in regulating these diffuse decisions, the Scoping Plan attributes a comparatively smaller share of reductions to the land use and transportation issues addressed by SB 375.

The newly passed SB 375 ties GHG emission reduction to the exercise of land use authority by local governments, and the programming of funds for transportation improvements. SB 375 did not begin as a greenhouse gas reduction bill. It was first cast as CEQA streamlining legislation based on innovative regional planning work emerging from the State's largest Metropolitan Planning Organizations (SCAG and its counterparts in Sacramento, San Diego and the Bay Area). Termed "blueprint planning," these regional exercises have sought to encourage more compact and efficient regional development patterns in order to reduce vehicle trips and encourage use of public transit, among other desirable outcomes. SB 375, in its early drafts, simply sought to create incentives for this type of regional planning by allowing development projects that were consistent with the regional blueprint plans to use an easier environmental review process.

The bill was controversial from the start because it creates a State directive affecting local land use authority. The bill was continually refined through extensive negotiations involving environmental groups, the regional MPOs, local governments, the building industry and others. Of critical importance through the negotiations, SB 375 was eventually cast as implementation of AB 32, and identified the reduction of GHG emissions from the use of light duty vehicles as its goal. The bill took nearly two years to emerge from the Legislature and was signed by Governor Schwarzenegger on September 30, 2008, the last day to sign or veto bills for the 2007-8 session.

The piece of legislation that finally emerged creates tenuous but ambitious connections between land use, transportation, housing and environmental planning. As when it was initially conceived, it relies on blueprint planning, prepared by metropolitan regions as its critical lynchpin. SB 375 requires ARB to determine GHG emission reduction targets for each metropolitan region. Regions are then required to develop new plans to meet their respective targets, and to incorporate these new efforts into the on-going regional planning work done on transportation, housing and land use.

The core of the law's requirements is the new regional Sustainable Communities Strategy (SCS). The SCS is a regional land use and housing strategy that, when paired with the region's transportation plan, achieves emission reductions. The SCS needs to be included in the Regional Transportation Plan, a precursor for bringing federal transportation funds to the region's various projects. The SCS only needs to meet the emission reduction target if it is feasible to do so. If not, the region must identify what impediments it faced, and develop a separate plan, called an Alternative Planning Strategy, that sets forth what steps the region would take to meet the target if the impediments cited were not in place.

The strategies developed under SB 375 "become real" in a few different ways. First, by requiring the SCS as part of an RTP, future transportation projects need to be consistent with the region's GHG emission reduction strategy. It should be noted, however, that the bill contained grandfathering provisions which exempted a number of current and pipeline projects. Further, there are limited, but real, hooks into local land use decision making. Specifically, through the existing Regional Housing Needs Assessment and local Housing Element update processes, local governments must accommodate, through zoning, the growth called for in the SCS.

Finally, the bill contains provisions for limited CEQA review (and some exemptions) for development projects consistent with either an SCS or APS. These provisions are meant to serve as an incentive to pursue "good projects", particularly transit oriented development. The bill creates a new class of projects within CEQA called Transit Priority Projects. These projects, depending on whether they meet a checklist of criteria, can, in some cases, be exempt from CEQA. Even those that are not exempt, can use various types of streamlined CEQA review.

SB 375 is slated to achieve a modest portion of the State's overall GHG reduction goals (about 3%). Further, it does not spell out sanctions should regions or local governments fail to meet its various requirements. Nevertheless, it is widely viewed as critical both to the State's AB 32 implementation efforts, and within the context of the State/local relations.

By creating a voluntary target for regional planning, the State (and other interested parties) has a basis to compare the level of effort in meeting goals among the various regions of the State. It is widely believed that future discretionary State funding will flow to those regions that are performing best.

There have been many recent attempts to establish a State-defined interest to guide the exercise of local land use authority. The State clearly views its immense challenge under AB 32 as a turning point in asking for more consistent, coordinated and outcomes-oriented land use planning from local agencies.

At the same time, local governments and the regional planning agencies have developed momentum behind their own blueprint planning efforts. More local agencies recognize a mutual benefit in looking beyond their

own boundaries in making decisions. For example, within the SCAG region, there are more than 50 Compass Blueprint demonstration projects in which local governments participated voluntarily.

The implementation of SB 375, within the SCAG region, will play out over the space of 4 years, leading up the preparation of the 2012 RTP. In that time period, the region will develop an approach that balances the interests of various stakeholders, while achieving the intended goals of the legislation. In a region as large and complex as Southern California, this objective will likely prove challenging. For that reason, it is imperative to implement SB 375 in the most open, participatory, and transparent process possible. The region's cities, counties, transportation commissions, private sector, and residents have a stake in how SB 375 proceeds, and it will change how planning is done in the region. For the region to succeed, we need to work together.